

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 16205
[Redacted],	)	
	)	DECISION
Petitioner.	)	
_____	)	

On November 6, 2001, the staff of the Tax Discovery Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing income tax, penalty, and interest for the taxable year 1999 in the total amount of \$462.

On December 20, 2001, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not respond to the Tax Commission's hearing rights letter and has provided nothing further for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

Early in the year 2001, the taxpayer came into the Boise office of the State Tax Commission to get assistance in the preparation of his Idaho income tax returns for 1998 and 1999. The taxpayer met with an employee of the Tax Commission, and she helped him prepare his returns. However, the taxpayer did not leave a copy of his returns when he left the Tax Commission. The Tax Commission employee made a referral of the taxpayer to the Tax Discovery Bureau, which monitored the Tax Commission's records for the filing of the taxpayer's returns.

The taxpayer did not send in his returns so the Tax Discovery Bureau (Bureau) sent the taxpayer a letter asking about his filing requirement and the filing of his returns. The taxpayer did not respond. The Bureau began gathering information on and about the taxpayer and determined he was required to file Idaho income tax returns. The Bureau prepared returns for

the taxpayer but only sent a Notice of Deficiency Determination to the taxpayer for tax year 1999.

The taxpayer protested the Bureau's determination stating that the state of Idaho did not prove that he was required to file an Idaho return. He said he was not domiciled in Idaho during part of 1999 and that the federal documents he had showed that the state of Idaho owed him a refund. The Bureau did not receive any further correspondence from the taxpayer, so the matter was referred for administrative review.

The Tax Commission sent the taxpayer a letter giving him two options for having the Notice of Deficiency Determination redetermined. The taxpayer did not respond to the Tax Commission's letter, so a follow-up letter was sent. The taxpayer still did not respond. Therefore, the Tax Commission decided the matter based upon the information available.

In 1998, the taxpayer worked for three different employers. Two of the employers were Idaho based companies; however, all three employers made Idaho withholdings from the taxpayer's earnings. For 1998, the taxpayer's earnings were in excess of the filing requirements of Idaho Code section 63-3030. In 1999, the taxpayer also worked for three different employers. Two of those employers made Idaho withholdings from the taxpayer's earnings. The taxpayer's earnings from those two employers were well in excess of the filing requirements of Idaho Code section 63-3030.

The 1999 W-2 wage statements the taxpayer provided during his visit to the Tax Commission showed he worked for an employer in Nevada for part of the year. The taxpayer also stated in his protest letter that he was not domiciled in Idaho for a portion of 1999. Domicile is defined in IDAPA 35.01.01.030, Income Tax Administrative Rules, as the place where an individual has his true, fixed, permanent home and principal establishment, and to

which place he has the intention of returning whenever he is absent. The term domicile denotes a place where an individual has the intention to remain permanently or for an indefinite time. Domicile, once established is never lost until there is a concurrence of a specific intent to abandon an old domicile, an intent to acquire a specific new domicile, and the actual physical presence in a new domicile.

The taxpayer's W-2 statements show that he was in [Redacted] for part of 1999. However, an individual's domicile is not necessarily lost by a protracted absence from the home where the intention to return remains. Wilson v. Pickens, 444 F. Supp. 53 (W.D. Okl. 1977). The taxpayer did not provide anything to show he intended to abandon Idaho as his domicile. Nor did he provide anything to show he had acquired another state as his domicile.

It is a fundamental rule of law that all persons have a domicile somewhere. Taylor v. Milam, 89 F. Supp. 880, 881 (P.C. Ark. 1950); Ex parte Phillips, 275 Ala. 80, 152 So. 2d 144, 146 (1963). The existing domicile, whether of origin or selection, continues until a new one is acquired, and the burden of proof rests upon the party who alleges the change. Bodfish v. Gallman, 378 N.Y.S. 2d 138, 141, 50 A.D.2d 457 (1976). The taxpayer had a prior history of filing resident Idaho income tax returns at least back to 1992. The taxpayer acquired Idaho driver's licenses in 1991, 1995, and 1998. He also purchased Idaho resident fish and game licenses in 1990, 1994, 1996, 1997 and 1998. This information shows the taxpayer considered himself a resident of and domiciled in Idaho. Since the taxpayer asserted that he was not domiciled in Idaho for all of 1999, he has the burden of proving his domicile changed.

The taxpayer did not provide anything to show his domicile changed. Therefore, the Tax Commission must conclude that the taxpayer left Idaho temporarily for employment reasons in

1999 and then returned to Idaho. This is somewhat evidenced by the fact that the taxpayer received the Notice of Deficiency Determination on this matter at an address in [Redacted] Idaho.

In addition to not providing proof that he changed his domicile, the taxpayer failed to provide anything to show that the return prepared by the Bureau was incorrect. Again, the taxpayer did not meet his burden of proof. Albertson's, Inc. v. State, Dept. of Revenue, State Tax Com'n, 106 Idaho 810, 683 P.2d 846 (1984). Therefore, the Tax Commission upholds the Bureau's determination that the taxpayer was required to file Idaho income tax returns and its computation of the taxpayer's Idaho tax.

The Bureau added penalty and interest to the taxpayer's tax. The Tax Commission reviewed these additions and found them appropriate and in accordance with Idaho Code sections 63-3046 and 63-3045.

When the Bureau began dealing with the taxpayer, the Bureau asked about the taxpayer's 1998 and 1999 returns. However, when the Bureau issued the Notice of Deficiency Determination, the Bureau only addressed the 1999 return. Since the 1998 return was part of the initial investigation and the taxpayer met the filing requirement for 1998, the Tax Commission finds that the 1998 return should have been part of the Notice of Deficiency Determination. Therefore, the Tax Commission hereby incorporates taxable year 1998 in this decision.

WHEREFORE, the Notice of Deficiency Determination dated November 6, 2001, is hereby MODIFIED, in accordance with the provisions of this decision and, as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1998	\$(244)	\$ 0	\$ 0	\$(244)
1999	333	83	68	484
			TOTAL DUE	<u>\$240</u>

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of taxpayer's right to appeal this decision is included with this decision.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2002.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

### **CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 2002, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]